80-1418

No. _____

Office-Supreme Court, U.S.
FILED
FEB 21 1981
ALEXANDER L. STEVAS,
CLERK

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1980

RADOS STEVLICH and NIKOLA ZIVOVIC,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

ANDREW B. SPIEGEL
Counsel for Petitioners
77 West Washington St.
Suite 707
Chicago, Illinois 60602
312/782-8999

February 21, 1981

QUESTIONS PRESENTED FOR REVIEW

1. Whether the constitutional standards of due process, as enunciated in BRADY v. MARYLAND, 373 U.S. 83 (1963), and related decisions, were violated by the government's suppression of evidence material to the defense.

2. Whether the constitutional standards of due process, as enunciated in DAVIS v. ALASKA, 415 U.S. 308 (1973), and related decisions, were violated by the limitations placed on defense cross-examination of government witnesses.

3. Whether the Trial Court's actions as affirmed by the Court of Appeals require this Court to exercise supervisory control by remanding this case for further proceedings.

TABLE OF CONTENTS AND AUTHORITIES

	PAGE
Questions Presented for Review	1
Opinions Below	2
Jurisdiction	2
Constitutional Provisions Involved	4
Statutory and Rules Provisions Involved (Rule 16[a][1][c] of the Rules of Criminal Procedure)	6,7,37
Statement of the Case	7
Reasons for Granting the Writ	17
Conclusion	53
Appendix A (Court of Appeals Order of 10/21/80)	54
Appendix B (Court of Appeals Order of 12/23/80)	62
Appendix C (Court of Appeals Order of 12/15/80)	63
Appendix D (Motion for New Trial, 2/3/81)	64
Appendix E (Motion to Vacate, 2/12/81)	69

CASE CITATIONS

A.C.L.U., et al. v. CITY OF CHICAGO, et al., No. 75 C 3295, pending in Federal District Court, Northern District of Illinois	49

ALLIANCE TO END REPRESSION, et al. v. CITY OF CHICAGO, et al., No. 74 C 3268, pending as above 49

BRADY v. MARYLAND, 373 U.S. 83 (1963) 1,17-18, 26,37

COMMUNIST PARTY v. SUBVERSIVE ACTIVITIES CONTROL BOARD, 351 U.S. 115 (1955) 41,45

DAVIS v. ALASKA, 415 U.S. 308 (1973) 1,37, 40-41

GREEN v. McELROY, 360 U.S. 474 (1959) 41

MESAROSH v. U.S., 352 U.S. 1 (1956) 42,45

SERBIAN ORTHODOX DIOCESE v. MILIVOJEVICH, 426 U.S. 696 (1976) 20

U.S. v. NIXON, 418 U.S. 683 (1974) 23

U.S. v. SHOTWELL MFG. CO., 355 U.S. 233 (1957) 42,45

OTHER AUTHORITIES

A.B.A. Canons of Ethics, DR 7-110 19

Congressional Record, 10/1/76: "Tito's Campaign of Terror in the West", Hon. Philip M. Crane, p. E 5665 46

Congressional Record, 7/28/77: "Yugoslav Terrorism and U.S. Security", Hon. Robert K. Dornan, p. E 4956-57 46

Congressional Record, 9/29/77: "Yugoslav Terrorism in the United States", Hon. Robert K. Dornan, p. E 5969-71 46

United Nations Charter 37

3A J. Wigmore, Evidence Section 940 p. 775 (Chadbourn Ed. 1970)	41
"Foreign Intelligence Activities in the United States", Senate Foreign Relations Subcommittee Report (the "Glennon Report")	3,12,14-15, 18,19,22,23, 24,25,27, 48,46,47
Customary International Law	37

CONSTITUTIONAL PROVISIONS

Article III, Section 2	2,4,36
Amendment I	5,36
Amendment V	5,37,40
Amendment VI	6,40,50
Amendment IX	6,36
Amendment X	6,37

STATUTES CITED

18 U.S.C. 371, 112(a), 844(d) and (i), 1116	8
26 U.S.C. 5861(d) and (f)	8
28 U.S.C. 1254(1)	2
28 U.S.C. 1651	2,52
28 U.S.C. 2106	2,42-43

No. _____

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1980

RADOS STEVLICH and NIKOLA ZIVOVIC,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT

The Petitioners, RADOS STEVLICH and NIKOLA ZIVOVIC, pray that a Writ of Certiorari issue to review the order of the United States Court of Appeals for the Seventh Circuit, which affirmed their convictions.

The case below involved the following parties in a federal criminal conspiracy proceeding: The UNITED STATES OF AMERICA v. RADOS STEVLICH, NIKOLA ZIVOVIC, NIKOLA KAVAJA, STOJILKO KAJEVIC, BOSKO RADONJIC, and ZIVOTIJE SAVIC.

OPINIONS BELOW

There was no formal opinion of the District Court or the Court of Appeals. The unpublished order of the latter which affirmed the convictions was entered October 21, 1980; its order denying rehearing was entered on December 23, 1980. Both orders appear at Appendix A and Appendix B, respectively.

JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. Sections 1254(1), 1651, and 2106, as well as Article III of the Constitution of the United States.

On October 21, 1980, the Court of Appeals affirmed the convictions in an unpublished order not to be cited pursuant to local rule 35. By that same order, the Court of Appeals denied the motions to remand and to supplement the record.

Timely Petitions for Rehearing and Rehearing In Banc were filed on November 4, 1980. The Court of Appeals denied them on December 23, 1980.

On January 13, 1981, the Clerk of the Court of Appeals was requested to certify the record and transmit it to this Court. On January 16, 1981, the Court of Appeals issued its mandate.

On February 4, 1981, prior to filing the instant Petition with this Court, a Motion for New Trial was presented to the District Court. It was based in part on a classified Senate Foreign Relations Subcommittee Report entitled "Foreign Intelligence Activities in the United States", (the "Glennon Report"). Counsel for Petitioners obtained the Yugoslav section of that Report on January 21, 1981.

The Court ordered the government to respond within seven days to said Motion. The Court also set a surrender date of March 2, 1981 for Petitioners Stevlich and Zivovic.

On February 13, 1981, a Motion to Vacate the surrender dates was presented. It was based upon declassified Department of State documents received by counsel for Petitioners on February 11, 1981. The Court denied the Motion, or-

dered counsel to file his Reply in support of the Motion for New Trial by February 23, 1981, and set February 26, 1981 as the ruling date on the Motion.

This Petition for Certiorari was filed within sixty (60) days from the date upon which rehearing was denied. A motion to recall the mandate has been filed concurrently with this Petition.

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States, Article III, Section 2:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; -- to all Cases affecting Ambassadors, other public Ministers and Consuls; -- to all Cases of admiralty and maritime Jurisdiction; -- to Controversies to which the United States shall be a Party; -- to Controversies between two or more States; -- between a State and Citizens of another State; -- between citizens of different States; -- between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.
>
> In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party,

the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Constitution of the United States, Amendment I:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peacably to assemble, and to petition the Government for a redress of grievances.

Constitution of the United States, Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment of indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Constitution of the United States, Amendment VI:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Constitution of the United States, Amendment IX:

> The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Constitution of the United States, Amendment X:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

STATUTORY AND RULES PROVISIONS INVOLVED

Rule 16(a)(1)(c) of the Rules of Criminal Procedure:

> DOCUMENTS AND TANGIBLE OBJECTS. Upon request of the defendant the government shall permit the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions

thereof, which are within the possession, custody or control of the government, and which are material to the preparation of his defense or are intended for use by the government as evidence in chief at the trial, or were obtained from or belong to the defendant.

STATEMENT OF THE CASE

This case involves the subject of international terrorism. The Petitioners and their co-defendants were convicted of alleged acts of terrorism directed against the government of Yugoslavia. They were denied the opportunity to establish that the Yugoslav government is, itself, engaged in a terror campaign in this country directed at Yugoslav emigres and their organizations. They were also denied the opportunity to discover what role the Yugoslav Intelligence Service (Y.I.S.) had in this case.

The Petitioners and four additional Serbian emigres, were named in a nine-count indictment on January 9, 1979. They were charged with participating in a bombing conspiracy and bomb related offenses, and with an attempt to assassi-

nate Marshall Josip Broz Tito (Tito) of Yugoslavia, in violation of 18 U.S.C. 371, 112(a), 844(d) and (i), 1116, and, 26 U.S.C. 5861(d) and (f).

These acts allegedly occurred between May, 1975 and November 21, 1978. Count Five of the indictment alleged an attempt to kill Tito in March, 1978; that Count was dismissed prior to trial, apparently because the government refused to identify a confidential informant.

On January 18, 1979, the defense caused eight subpoenaes duces tecum to be issued to the Directors of the Federal Bureau of Investigation (F.B.I.), the Central Intelligence Agency (C.I.A.), the United States Secret Service (U.S.S.S.), the Bureau of Alcohol, Tobacco and Firearms (A.T.F.), and to the Secretaries of the State and Defense Departments. In addition, the Commissioner of the Immigration and Naturalization Service and the President of the United States were subpoenaed.

In response to those subpoenaes, five boxes of documents were submitted to the Trial Court for in camera inspection. Both the Trial Court

and later the Court of Appeals examined those documents and held them to be irrelevant. The defense never saw them.

The defense was trying to establish that the government of Yugoslavia is engaged in a campaign of terror in this country, designed to silence critics of that Communist regime. It was also trying to establish the degree of co-operation between the Yugoslav and U.S. governments in those efforts directed against them.

The trial of four of the six Serbians began on April 17, 1979. Two of the six, BOSKO RADONJIC and ZIVOTIJE SAVIC, pled guilty prior to trial. The government had recovered thirteen sticks of dynamite from a parking garage operated by Radonjic in New York City; four dynamite bombs were recovered from Savic's house in Downers Grove, Illinois.

The remaining four Serbians were tried before JUDGE HUBERT L. WILL and a jury. They were RADOS STEVLICH, NIKOLA ZIVOVIC and STOJILKO KAJEVIC, each of whom resided in the Chicago area, and NIKOLA KAVAJA, a resident of Paterson, New Jersey.

The government at trial relied upon three major sources of evidence: 1) the testimony of BOGOJE PANAJOTOVIC (Bone), who was, in effect, an unindicted co-conspirator-turned-F.B.I. informant; 2) the taped conversations of the accused as translated from Serbo-Croatian to English by an F.B.I. translator with the assistance of Bone; and, 3) the items seized in searches of Kavaja's residence in Paterson and Radonjic's parking garage.

Throughout the trial, the trial judge refused to allow the defense to explore the issues of the accused's treatment in Yugoslavia as it related to the circumstances of this case. The question of the terror campaign directed against the Defendants by the Yugoslavs was touched upon, but not fully explored.

The Trial Court also severely limited the cross-examination of Bone, especially as to his bias and motivation for testifying. The defense was attempting to establish that Bone was an agent of the Yugoslav Intelligence Service (Y.I.S.).

Under cross-examination by defense counsel, Bone was asked:

> Monico: Well, you would be welcome (in Yugoslavia) in light of the fact that you are doing a service for the Yugoslavian government?
>
> Gov. Atty.: Objection, and I move that it be stricken.
>
> Court: Indeed. WHAT SERVICE IS HE DOING TO YUGOSLAVIA? THEY HAVE NO INTEREST IN THIS CASE. Now, come on, Mr. Monico. You know very well that this is a case in which the issue is whether or not the defendants violated American law.
>
> (Tr. 1970)
> (emphasis supplied)

As is discussed infra, the Yugoslav government was (is) not only interested in this case, they had detailed knowledge of the proceedings and, in fact, monitored them. Marshall Tito was so enraged that Count Five had been dismissed that he flew into a rage whenever the subject came up.

The trial lasted for six weeks, and ended with each of the Defendants being found guilty on all Counts under which they were charged. Each Defendant appealed to the Seventh Circuit.

On appeal, the issue of the Yugoslav government's terror campaign was again raised. On April 29, 1980, Kavaja filed a Motion to Remand

based upon the excerpts of the Glennon Report that had appeared in the press. For the first time in this case, the defense was able to establish the fact that the Y.I.S. is conducting a terror campaign in this country, designed to penetrate, neutralize and destroy emigres and their groups, especially Petitioners' group.

In that Motion, Kavaja asked that the case be remanded for a de novo hearing to determine two issues: 1) whether there had been good faith compliance with the defense subpoenaes, and, 2) whether the documents subpoenaed were relevant and material to the defense.

On May 20, 1980, the Court of Appeals ordered the government to obtain the sections of the Glennon Report relating to Yugoslavia for its in camera examination. There was no indication that the government ever complied with that order until October 21, 1980. In its order affirming the convictions, the Court of Appeals stated in a footnote:

> "We have also found no support at all in materials we have recently examined in camera, produced by the government in response to an order we entered on May 20, 1980, in connection with the motion to remand." at p. 4.

On May 23, 1980, Kavaja filed a motion to supplement the record with documents obtained from his F.B.I. file which indicated that the F.B.I. had attempted and failed to recruit him as a double agent or informant in November, 1961, three months after his arrival in this country. After that failure, the F.B.I. tried to link him with subversive activities, again unsuccessfully.

Those documents were obtained under the Freedom of Information Act (FOIA) prior to trial by Kavaja's trial attorney. They were not used at trial and were first introduced into the case by Kavaja's court-appointed counsel on appeal. Those F.B.I. documents are incomplete, and Kavaja asked that his entire file be produced.

Those F.B.I. documents raise more questions than they answer. For example, copies of many of those documents were given to a "Foreign Liaison Unit". It is suspected that the F.B.I. was in liaison with the Y.I.S.

Those documents also indicate that the F.B.I. was attempting to link Kavaja to the February 5, 1963 attack on the Yugoslav Consul-

ate in Chicago, despite the fact that Department of Justice ruled there was no basis for federal jurisdiction over that incident.

On October 21, 1980, the Court of Appeals, in an unpublished order, affirmed the convictions and denied both the Motion to Remand and the Motion to Supplement. (See Appendix A.)

While awaiting the decision of the Court of Appeals, additional FOIA requests were made by appellate counsel. There are currently thirty (30) FOIA requests outstanding to the State Department, the F.B.I., the C.I.A., and the Secret Service. Initial responses from the F.B.I. indicate voluminous files on Stevlich, Zivovic and Kavaja. Appellate counsel also learned that the F.B.I. has an eight-page document on him that it has claimed is exempt from disclosure in the interests of "national defense or foreign policy". It is impossible to determine at this time whether that document relates to this case.

On January 21, 1981, appellate counsel obtained the Yugoslav section of the Glennon Report. That Report, based, inter alia, on F.B.I.

and C.I.A. documents, establishes precisely what the defense was attempting to prove: the existence of a campaign of terrorism in this country conducted by the Y.I.S., which our government has, to date, been unable or unwilling to stop.

The Glennon Report suggests that the Y.I.S. has intimidated and assassinated people in this country; that the Y.I.S. has staged "terrorist" attacks on Yugoslav diplomats and diplomatic establishments so as to increase government pressure on emigre groups. On February 3, 1981, Petitioners and Kavaja filed a Motion for New Trial based, in part, on the Glennon Report. (See Appendix D.)

In the hearing before JUDGE WILL on that Motion, it became apparent that the trial judge was so convinced of the Defendants' guilt that he could not objectively examine the issue before him.

The lack of objectivity on the part of JUDGE WILL was further demonstrated on February 13, 1981. In presenting Petitioners' motion to vacate the order concerning surrender

dates (Appendix E), the Judge stated on the record that he did not care if documents were obtained that established a conspiracy between the Yugoslav and U.S. governments, that showed Bone was a Yugoslav agent, that showed that Bone perjured himself. As far as Judge Will is concerned, the Defendants confessed on the tapes and the case is closed. A transcript of the hearing has been ordered and will be transmitted to this Court if so desired.

The motion presented on February 13, 1981, was based upon documents obtained by appellate counsel from the Department of State. They indicate that SECRETARY OF STATE CYRUS VANCE was discussing this case with the Yugoslavs, that the case was being closely watched by the State Department and the Yugoslavs, that Marshall Tito, himself, was not only familiar with the case, but was enraged that Count Five had been dismissed.

The State Department documents also indicate that the Yugoslav government considered Petitioners' organization, Serbian National Defense, "most extreme", meaning that it could only be dealt with using "knives, revolvers and

bombs".

The pending FOIA requests establish that there are many more pieces to this jigsaw puzzle in the possession of the government. Certiorari is sought to review the fundamental questions of whether the Petitioners were denied due process by the suppression of this evidence, whether the Petitioners were denied due process by the limitations placed upon their cross-examination of government witnesses, and whether this Court should exercise its supervisory control to correct the constitutional abuses that have occurred as a result of the proceedings below.

REASONS FOR GRANTING THE WRIT

1. THE DECISION BELOW DIRECTLY CONFLICTS WITH THE DUE PROCESS STANDARDS ENUNCIATED BY THIS COURT IN BRADY v. MARYLAND, 373 U.S. 83 (1963).

In BRADY v. MARYLAND, this Court stated:

> We now hold that the suppression by the prosecution of evidence favorable to an accused UPON REQUEST violates due process

> where the evidence is MATERIAL EITHER TO GUILT OR TO PUNISHMENT IRRESPECTIVE OF THE GOOD FAITH OR BAD FAITH of the prosecution.
>
> 373 U.S. at 87
> (emphasis supplied)

Here, the defense subpoenaed documents to substantiate its theory that the Yugoslav Intelligence Service (Y.I.S.) is conducting a terrorist campaign in this country unimpeded by the U.S. government, directed against Petitioners.

The prosecution did not move to quash those subpoenaes. Five boxes of documents were produced for JUDGE WILL's in camera inspection. He reviewed them and held that they were not relevant to this case. The defense was never permitted to examine them.

The Court of Appeals conducted its own in camera examination of those documents. In addition, it ordered the government to produce the Glennon Report insofar as it related to Yugoslav activities for its in camera examination.

Whether the Yugoslav section of the Glennon Report was ever produced is unknown to counsel for Petitioners. The government gave no indi-

cation that it had complied with that order. It engaged in an ex parte communication with the Court of Appeals by turning over certain materials in response to the Court's order of May 20, 1980.

Defense counsel were never notified of the government's filing, in direct violation of the American Bar Association's Canons of Ethics, DR7-110, which proscribes ex parte communication with the Court.

The panel order of October 21, 1980 (Appendix A), refers only to "materials we have recently examined in camera". (p. 4, note 1.)

On January 21, 1981, counsel for Petitioners obtained the Yugoslav section of the Glennon Report. That report is based upon interviews with over forty agents of the F.B.I. and C.I.A., and a review of thousands of pages of classified F.B.I. and C.I.A. documents.

The Glennon Report confirms the defense position that the Y.I.S. has extensive operations in this country. Their goal is the penetration, neutralization and destruction of anti-

communist emigre groups, according to confidential F.B.I. sources.

An example cited by one F.B.I. source was the Serbian Orthodox Church dispute. According to that source, the dispute had been started by the Y.I.S. and would have been known to the high officials of the Yugoslav government, including Marshall Tito, himself. That dispute was resolved in favor of the Mother Church in Yugoslavia. SERBIAN ORTHODOX DIOCESE v. MILIVOJEVICH, 426 U.S. 696 (1976).

Another "confidential source who furnished reliable information in the past" to the F.B.I., advised that in March, 1971, Tito was planning a visit to the United States. The Y.I.S. was going to dispatch agents to the U.S. in connection with that visit to create several "incidents" such as bombing a Yugoslav diplomatic establishment or staging an attack on a Yugoslav official. Their purpose -- to cause American security elements to intensify their coverage of Yugoslav emigres and their organizations.

In June, 1977, DRAGISA KASIKOVIC (Kasikovic) and a nine-year old girl, IVANKA MILOSEVIC (Milosevic), were brutally murdered in Chicago. That same month, according to the Glennon Report, the F.B.I. received a reliable report that the Y.I.S. was behind those murders.

The drafters of the Glennon Report were furnished with information "by another United States government agency which conducts intelligence investigations", to the effect that a Cabinet-level official of the Yugoslav government had made the decision to take strong action against Yugoslav emigres abroad, including assassinations. A particular diplomatic official assigned to a Yugoslav Consulate General in a country outside the United States has been chosen specifically to head up a special anti-emigre unit which will operate out of the Consulate General.

The Yugoslav section of the Glennon Report concludes with a statement that the F.B.I. believes that the bulk of the incidents referred to in the Report are not violative of federal

PREVIOUS PAGE WAS BLANK

statutes within the jursidiction of the F.B.I. and have, therefore, not been investigated or verified by the F.B.I. It is the opinion of the F.B.I., however, that such actions do breach diplomatic norms.

The defense was never provided with the Glennon Report. They were never permitted to examine the documents that were produced by the government. This Court held in U.S. v. NIXON, 418 U.S. 683 (1974), that a party is entitled to production of documents if those documents are relevant, are admissible and the request is specific. The subpoenaes were specific, but the defense could not determine the relevance or admissibility of the documents because of the in camera examination.

In the hearing conducted on Petitioners' Motion for New Trial on February 4, 1981, it became apparent that JUDGE WILL was not interested in the newly discovered evidence no matter how relevant or material it was to the defense. Clearly, the foundation documents of the Glennon Report might lead to the discovery of exculpatory

evidence. Clearly, the Glennon Report, itself, is material to the preparation of the defense. But JUDGE WILL did not want to hear about it.

JUDGE WILL was not clear about whether the documents he reviewed in camera included documents detailing Y.I.S. activities in the United States. According to both the JUDGE and the government, the vast majority of the material consisted of internal reports of investigations of the Defendants for criminal activities not charged in the indictment.

JUDGE WILL did state that:

> THE COURT: I didn't see -- I have never seen the Glennon Report, but I looked at the original documents, and there were thousands of them. (Tr. 2/4/81; p.5)

When asked whether those documents included documents referring to the activities of the Y.I.S. in the United States directed against emigres and emigre organizations, the following exchange took place:

> THE COURT: They included documents indicating the cooperation between United States intelligence agencies and Yugo-

> slav intelligence agencies. They did not identify activities of -- well, in fact, they suggested some of that, even, as a matter of fact.
>
> MR. SPIEGEL: Well, in the Glennon Report, your Honor, it's more than a suggestion. According to the Glennon Report there is --
>
> THE COURT: Mr. Spiegel, I am not going to grant a motion for a new trial based on the Glennon Report.
>
> (Tr. 2/4/81; p. 9)

Later in the hearing, the Trial Court contradicted its own statement that it had never seen the Glennon Report.

> THE COURT: The answer is that I'm going to deny your motion for a new trial. I don't even need a brief from the Government on it, believe me. I can see no basis at this time -- you know, the newly discovered evidence, by your own statement, doesn't tell me anything. It suggests that the Yugoslav Intelligence Agency is engaged in some activities in the United States. So what?
>
> MR. SPIEGEL: Including murdering Yugoslav emigres in this country.
>
> THE COURT: Possibly, possibly. IT DOESN'T SAY THAT. IT SAYS POSSIBLY.
>
> (Tr. 2/4/81, p. 14-15)
> (emphasis supplied)

The whole point of the motion (Appendix D) was to demonstrate that the government is in possession of evidence that is relevant and

material to the defense and that was not produced. Whether exculpatory evidence exists cannot be determined until production is made. BRADY requires the production of that evidence. The Petitioners were denied due process by the suppression of that information.

The Court was then asked to order production of all documents relating to Y.I.S. activities in Chicago. The following exchange then occurred:

> MR. SPIEGEL: Well, in the alternative, your Honor, I ask that the Court order the Government to produce all documents relating to Yugoslav Intelligence Service Activities in Chicago.
>
> THE COURT: I'm not going to do that, either. As far as I'm concerned, this case is closed. The Government did that once, and I looked at them.
>
> MR. SPIEGEL: You just said that the documents that they produced related to surveillance of these individual defendants.
>
> THE COURT: I said that isn't all it related to, Mr. Spiegel. You have to listen, not selectively, but completely. I said it related to Croatians, Serbians, the Yugoslav Intelligence -- there was all kinds of memoranda with respect to what the Yugoslav Intelligence Service told the F.B.I., or what the F.B.I. reported to the Yugoslav Intelligence Service, and so forth.
>
> You know, it isn't the fact that I have any reason to believe that

> there were documents that were withheld from me.
>
> (Tr. 2/4/81; p. 20)

The hearing concluded with the Trial Court agreeing to examine in camera the Glennon Report. The government was given one week to respond, and Petitioners were ordered to surrender to the U.S. Marshall on March 2, 1981.

Further documents material to this case were obtained by counsel for Petitioners on February 11, 1981, pursuant to his FOIA requests to the Department of State (D.O.S.) on behalf of Petitioners.

The D.O.S. Office of Security located 46 documents relevant to those requests and so numbered them. It then stated:

> Documents numbered 1-14 are being released to you in full. Portions of documents numbered 15-24 and all of document number 25 have been withheld to protect the privacy of others. Portions of documents numbered 23 and 24 which originated with the U.S. Secret Service and those portions of documents numbered 23, 24, 27-33 which originated with the Federal Bureau of Investigation (FBI) have been referred to those agencies for review. The Department's Information and Privacy Staff will notify you of the determinations. Document number 26 which originated with the Central Intelligence Agency (CIA) and documents numbered 34-37 which originated with the FBI are being returned to the CIA and FBI for

> review and direct response to you. Documents numbered 38-46 which originated with the Bureau of European Affairs (EUR) are being forwarded to EUR for review and the Department's Information and Privacy Staff will also notify you of these determinations.
>
> (Letter of 2/5/81, from William K. Larson to Andrew B. Spiegel, see Appendix E.)

The D.O.S. response indicates the existence of additional documents material to the preparation of the defense that were not produced. Among the documents that were included in that response were translations of news articles which appeared in Yugoslavia concerning this case. One article, dated May 26, 1979 (D.O.S. doc. #4), states in part:

> Priest Kajevic and his group belong to the SOPO, the most extreme terrorist organization, a part of the so-called "Srpska Nardona Odbrana" (Serbian National Defense). The goals of this Chetnik organization mostly made up of the defendants themselves were only terrorist activity and ILLEGAL THROWING OF VARIOUS ANTI-YUGOSLAV MATERIALS INTO YUGOSLAVIA.
>
> (emphasis supplied)

Another article (D.O.S. doc. #2) quotes the joint communiques issued by President Carter at the conclusion of Tito's visit to the United

States in 1978. It then states, inter alia:

> It also remains to be seen whether the competent American organs will abandon their past practice of waiting for the crime to be committed or will begin to take action in the spirit of the aforementioned obligations.

D.O.S. Document #5 contains an official report of the agency of Communist Yugoslavia, "Tanjug". In describing the article which dealt with the commencement of the trial of Petitioners and their co-defendants, a D.O.S. analyst stated, inter alia:

> In this propogandist exposition, first, nowhere is it said that the state prosecutor withdrew the charge because of an alleged "preparation for the assassination of Tito", because Tito falls into a hysterical trance whenever that is mentioned . . .
>
> . . . When Tanjug, and all the other newspapers report on Croatian emigration, the expression is "extreme Croatian emigrant groups" whatever organization is mentioned. But of the Serbian emigrant groups only the "Serbian National Defense" has been called "most extreme", which in practice means "most extreme enemy" or the greatest foreign enemy of Communist Yugoslavia and Tito. The dialectic manipulation of the Security Police is that it is still possible to talk and negotiate with the "extremes", as with Croatia, where the "special" Josip Vrhovac as the Federal Secretary for Foreign Affairs is in constant "contact" through

> "diplomatic missions" with so-called spokesmen of the Croatian emigrant groups, with whom he even collaborated at that time, as the Soviets did with Ustashi "representatives". But, with these "most extreme" one "negotiates" only with a knife, a revolver or a bomb. Here is the key to these problems, which one must be aware of.

Other documents produced by D.O.S. include a telegram from the Chicago Field Office to "SY/CC", re: TAG interest in monitoring trials of Croatian and Serbian Terrorists. That document indicates that one of the government prosecutors in this case was given the name of -- (censored in doc.) and was amenable to direct contact from her. It also indicates that a Mr. BOUDAMIR (phonetic) of the Yugoslav News Agency had called him regarding the two cases. (D.O.S. doc. #18)

Even Secretary of State CYRUS VANCE (Vance) got into the act. In a confidential telegram from Vance to the American Embassy in Canberra dated December 3, 1978, Vance advised Canberra of the charges against the "Serbian terrorists" and concluded:

> In discussions with the Yugoslavs here we intend to emphasize the positive . . . the seriousness of the charges against the sixx (sic) Serbs. (D.O.S. Doc. #22, attached to Appendix E as "Exhibit B".)

Other D.O.S. documents indicate the existence of additional documents material to the defense. The documents that were produced are censored in many places. But the picture painted is clear.

The State Department has monitored this case from the outset, and has a direct interest in not only the convictions, but the prison terms and this very appeal. That very information is given to the Yugoslav government. The roles of the F.B.I., C.I.A., the Y.I.S., and other agencies are not clear, but are material to the defense and could lead to exculpatory evidence.

The Trial Court was not interested in the D.O.S. documents. On February 13, 1981, Petitioners' Motion to Vacate the Surrender Dates was presented, based upon the further documents discovered. Again, Petitioners were not aware whether the documents had been produced pursuant

to their subpoenaes.

MR. SPIEGEL: Could I ask your Honor if the documents that I attached to this Motion were among the documents produced by the Department of State?

THE COURT: You know, I think it would make little or no difference. The point I am making to you is that this is a very rare case, in my experience. This is a case in which the most effective Government evidence was the Defendants' statements, recorded at the time of their activities, which were the most incriminating, the most inculpating, most convicting statements that they could possibly have made.

I don't think that any of the -- you know, that's, in effect, what the Court of Appeals concluded, that all of the business with respect to cross-examination - all the arguments that were raised were vitiated by the ultimate fact, and the impact of that fact, that the defendant, in effect, pleaded guilty in their own statements long before the trial.

(Tr. 2/13/81; p. 6-7)

The order of the Court of Appeals is attached in Appendix A. At page 3, the Court stated:

The defendants principal line of defense at trial was an attack on the credibility of the chief government witness, BOGOJE PANAJOTOVIC. Like the defendants, Panajotovic had been a member of "SOPO" (Freedom for the Serbian Fatherland), an organization of Serbian nationals opposed to the communist government of Yugoslavia. PANAJOTOVIC'S TESTIMONY AGAINST THE DEFENDANTS WAS AN IMPORTANT, AND PERHAPS IN

> SOME CASES, ABSOLUTELY CRITICAL PART OF THE GOVERNMENT'S CASE IN CHIEF. The thrust of the defendants' attack on Panajotovic's credibility was that he was an agent of the Yugoslav secret police, which, with or without the knowing cooperation of the Federal Bureau of Investigation, was engaged in an effort to silence SOPO's opposition to the Tito regime.
>
> (emphasis supplied)

The Court of Appeals did not conclude that the Defendants had pleaded guilty in their own statements before trial.

The Trial Court was asked about the Vance telegram:

> MR. SPIEGEL: Well, does your Honor believe that the defense would have been entitled to see a confidential telegram from the Secretary of State to the Embassy in Canberra telling them that they are going to -- in their discussions with the Yugoslavs here, "...we attempt to emphasize the positive, the conviction of the two Croatians, and the seriousness of the charges against the six Serbs"?
>
> THE COURT: So what? What is that -- you, I don't quite understand what the hell that has to do with the evidence, if you will pardon my frustration. But your paranoia is so intense that you can make something out of absolutely nothing.
>
> So the State Department told -- what -- the American Embassy in Canberra --
>
> MR. SPIEGEL: That's correct, your Honor, with copies to Belgrade, Zagreb and Bonn.
>
> (Tr. 2/13/81; p. 13)

The attitude of the Trial Court on this issue was clear:

> MR. SPIEGEL: -- but, your Honor, the whole -- the allegation has been made that there is evidence in the possession of the Government that was not produced and that was relevant and material to this case, and that is borne out by a letter from William Larson from the State Department.
>
> THE COURT: I don't know whether it is or not, but I will tell you --
>
> MR. SPIEGEL: It's attached as Exhibit A to this Motion.
>
> THE COURT: -- I will tell you that it will make no difference in my attitude whether or not there was other evidence which was not disclosed, even evidence that the Yugoslav government's representatives in this country were -- you know, I will tell you that at one point -- you . . .
>
> (Tr. 2/13/81; p. 20)

At that point the Trial Court advised counsel that the Court had contacted the Yugoslav Consulate in Chicago to ask them to recommend an interpreter for witnesses who didn't speak English.

The Trial Court indicated it would not grant the Motion for New Trial even if an international conspiracy to convict Petitioners could be established. When asked about the

documents that were not produced, the Court indicated:

> THE COURT: You know, I really say to you, and I guess I'm never going to get through to you, that I don't think they will make any difference at all. Let us assume that the Yugoslav Government, the American Government, and the Australian Government -- I don't care who -- were conspiring together to convict these defendants, and they got somebody wired for sound, for taping, and that somebody recorded conversations which were highly incriminating --
>
> MR. SPIEGEL: And let's suppose further that they got somebody else to stipulate to the accuracy of the translations.
>
> THE COURT: You know what? The translations were so meticulously gone over -- I heard the arguments, and nobody stipulated to the -- if you are suggesting that Brashich and Kochich -- Kochich?
>
> MR. KOLMAN: Kostich.
>
> MR. SPIEGEL: Kostich.
>
> THE COURT: -- Kostich, Kostich -- were conspiring with the Federal Government, you have really gone mad, you have really gone mad . . .
>
> . . . And if you are telling yourself that Brashich and Kostich conspired with the United States Government, the Yugoslav -- you know, Brashich comes from a long line of anti-Communist Serbians, and Kostich, I believe, too. And they were retained by these defendants because of their competence, because they were fluent in Serbian, and because they were know anti-Tito Serbian-Americans. And to suggest that they were conspiring with the United States Government or the Yugoslav Government is just pure fantasy.

> MR. SPIEGEL: In a case like this, your Honor, there's a fine line between reality and paranoia.
>
> (Tr. 2/13/81; p. 25-26)

The defense was never given the opportunity to present these circumstances to the jury. They were denied the opportunity to defend themselves by the Trial Court's refusal to allow them to put on their defense with the documents subpoenaed prior to trial. They were denied due process of law by the refusal of the lower courts to allow them to obtain documents material, relevant and vital to their defense.

Article III, section 2 of the Constitution of the United States provides that this Court shall have original jurisdiction in all cases affecting Ambassadors, other public Ministers and Consuls. Because of the diplomatic overtones of Petitioners' defense, this Court should accept jurisdiction.

The Petitioners' rights to free speech and free assembly as guaranteed by the First Amendment, as well as their human rights and fundamental freedoms as guaranteed by the Ninth and

Tenth Amendments, the United Nations Charter and customary international law, have been violated by the Y.I.S. campaign of terror in this country, directed at Yugoslavia's most dangerous foreign enemy -- the Serbian National Defense -- the organization of Petitioners.

The decisions of the lower courts are contrary to BRADY and its progeny. They are contrary to the Fifth Amendment guarantees of due process and Rule 16 (a)(1)(c) of the Rules of Criminal Procedure. Only action by this Court can prevent this miscarriage of justice and correct the constitutional deficiencies.

2. THE CONSTITUTIONAL STANDARDS OF DUE PROCESS ENUNCIATED IN DAVIS v. ALASKA, 415 U.S. 308 (1973) AND RELATED DECISIONS WERE VIOLATED BY THE LIMITATIONS PLACED ON DEFENSE CROSS-EXAMINATION OF GOVERNMENT WITNESSES.

Bone was the star witness for the government in this case. The tapes he obtained were the most damaging evidence used in the prosecution of Petitioners. They were translated from Serbo-Croatian to English by XENIA SKWORIKOV, who had been an F.B.I. employee since June 1, 1976. (Trial Tr. 527-529) She was a foundation

witness for the prosecution (Tr. 517-738). Bone helped her transcribe the tapes and identified the voices on them for her.

In addition, the defense was required to use her as an interpreter for them, despite the integral role she played in the prosecution's case and despite the fact that she was an F.B.I. employee.

Without the documents they subpoenaed, the defense could not effectively cross-examine either Bone or Skworikov. The Trial Court precluded cross-examination of Bone on his background in Yugoslavia, despite the fact that the government had raised the matter on direct examination.

During Bone's direct examination, two points were adduced by the prosecution. The government introduced the witness's Yugoslav history:

Q: Were you ever in prison while you lived in Yugoslavia?

A: Yes.

Q: From what years?

A: From '62 to '64.

Q: Were you ever in prison while you lived in Yugoslavia?

A: Yes.

Q: What were the charges?

MR. ANDREW: Your Honor, I want to object and ask to be heard.

THE COURT: I am going to sustain the objection.

MR. ANDREW: May I also ask, since I have interrupted, at this time if the interpreter would mind speaking more loudly so the persons who do speak Serbian can hear her words as well.

MR. MC ALLISTER: Can you do that, please?

BY MR. MC ALLISTER:

Q: Did you ever serve in the military in Yugoslavia?

MR. ANDREW: I will continue with another objection, relevant as to his activities in Yugoslavia.

THE COURT: Yes, I think I have previously ruled that what happened in Yugoslavia so far as the defendants are concerned, or so far as Mr. PANAJOTOVIC is concerned, is irrelevant to this case.

MR. BRASHICH: I disassociate myself from Mr. Andrew's objection, for the record.

MR. KOSTICH: So do I, your Honor.

(Tr. 784-785)

The door to Bone's cross-examination was thus opened on this subject by the government's elicitation of this information. While the objec-

tion of one defense counsel was sustained, defense counsel for Kavaja and Zivovic disassociated themselves from this position, and should have been allowed to examine at length on this point. The Trial Court, at a later point, precluded this attack on Bone. A similar attack on the subjectivity of the translations was also precluded by the Trial Court.

These actions, coupled with the inability of the Defendants to obtain material evidence in the possession of the government, emasculated the defense.

The Petitioners' Fifth Amendment rights to due process and Sixth Amendment rights to confront the witnesses against them were denied.

The Court of Appeals affirmed the convictions. That decision is contrary to this Court's decision in DAVIS v. ALASKA, 415 U.S. 308 (1973) where, at page 316, this Court stated:

> A more particular attack on the witness' credibility is effected by means of cross-examination directed toward revealing possible biases, prejudices, or ulterior motives of the witness as they may relate directly to issues or personalities in the case at hand. The partiality of a witness is subject to exploration at trial, and is

"always relevant as discrediting the witness and affecting the weight of his testimony."

See also 3A J. Wigmore, Evidence Section 940, p. 775 (Chadburn rev. 1970).

Bone was the only government witness who could identify the speakers on the tapes; he was the only individual who could explain the circumstances and meaning of the tapes; he was the only prosecution witness who could provide the background and details of the alleged conspiracy.

This Court has recognized that the exposure of a witness' motivation in testifying is a proper and important function of the constitutionally-protected right of cross-examination. GREEN v. McELROY, 360 U.S. 474 (1959).

Only by granting this writ can this right be restored in this case.

3. THIS COURT MUST EXERCISE ITS SUPERVISORY CONTROL TO CORRECT THE CONSTITUTIONAL DEFICIENCIES IN THE LOWER COURTS' PROCEEDINGS.

In COMMUNIST PARTY v. SUBVERSIVE ACTIVITIES CONTROL BOARD, 351 U.S. 115, 124-125 (1955), this Court said:

> The untainted administration of justice is certainly one of the most cherished aspects of our institutions. Its observance is one of our proudest boasts. This Court is charged with supervisory functions in relation to proceedings in the federal courts. See McNABB v. UNITED STATES, 318 U.S. 332. Therefore, fastidious regard for the honor of the administration of justice requires the Court to make certain that the doing of justice be made so manifest that only irrational or perverse claims of its disregard can be asserted...

Again in MESAROSH v. UNITED STATES, 352 U.S. 1, 14 (1956), this Court expresses its concern in this regard:

> This is a federal criminal case, and this Court has supervisory jurisdiction over the proceedings of the federal courts. If it has any duty to perform in this regard, it is to see that the waters of justice are not polluted. Pollution having taken place here, the condition should be remedied at the earliest opportunity.

In UNITED STATES v. SHOTWELL MFG. CO., 355 U.S. 233 (1957), this Court refused to review a case where the record was challenged on the basis of newly discovered evidence and where the record was so tainted with perjury and fraud. SHOTWELL was remanded to the District Court for a full airing as to the integrity of the record.

Here, the Court of Appeals was asked to exercise its statutory authority under 28 U.S.C.

2106 to require further proceedings relating to the Motion to Supplement the Record. It was also asked to remand the case in a separate motion.

Regarding the Motion to Remand, the Court of Appeals conducted its own review of the in camera documents examined by the District Court. It concluded:

> Our review of these materials also convinces us that there is no need to remand the case to the district court for further consideration of the question of good-faith compliance.1/ (footnote omitted) We therefore deny the motion for remand filed by defendant Kavaja.
>
> (Appendix A, p. 4)

The Court of Appeals decision on the Motion to Supplement was unilluminating:

> . . . Third, that the "Motion to Supplement the Record" is DENIED.
>
> (Appendix A, p. 8)

The failure of the District Court to permit Petitioners to conduct the discovery needed for their defense and the denial of the Motion to Remand were raised again on Petition for Rehearing.

Before the Court of Appeals issued its ruling on that Petition, a motion was filed to

require the Chicago Police Department to comply with a subpoena issued to it by Petitioners after their counsel learned that Bone had been a suspect in the Kasikovic/Milosevic murder investigation.

The Court of Appeals decisions on the rehearing and subpoena requests were equally unilluminating:

> This matter comes before the court for its consideration upon the "MOTION TO REQUIRE COMPLIANCE WITH SUBPOENA" filed herein on December 12, 1980 by counsel for the defendants-appellants. On consideration thereof,
>
> IT IS ORDERED that the motion is hereby DENIED.
>
> (Order of December 15, 1980, Appendix C)

> On consideration of the petitions for rehearing and suggestions for rehearing in banc filed in the above-entitled cause by counsel for defendants-appellants, no judge in regular active service has requested a vote on the suggestions for rehearing in banc, and all members of the original panel have voted to DENY a rehearing. Accordingly,
>
> IT IS ORDERED that the aforesaid petitions for rehearing filed November 3, 1980 by Appellant Kavaja; filed November 4, 1980 by Appellants Stevlic (sic) and Zivovic, and filed November 18, 1980 by Appellant Kajevic be, and the same are each hereby, DENIED.
>
> (Appendix B)

These orders are in conflict with this Court's decisions in the COMMUNIST PARTY, MESAROSH and SHOTWELL cases, supra.

The documents thus far obtained by Petitioners have substantiated their theories regarding the Y.I.S. The D.O.S. documents establish that Petitioners' organization, Serbian National Defense, is considered by the Yugoslav government to be Yugoslavia's most dangerous foreign enemy.

Both the SND and SOPO, the alleged terrorist organization of Petitioners, are anti-Communist Serbian emigre organizations. Both organizations have, over the years, actively participated in peaceful demonstrations in the United States directed at various Communist Yugoslav visitors, including Tito.

They have demonstrated before buildings housing segments of the official Yugoslav presence in the United States. They have voiced their opposition to the totalitarian Yugoslav regime by word, pamphlet, leaflet, and by association with other anti-Communist groups.

SND has, in addition, engaged in what the Yugoslav government terms the:

> . . . illegal throwing of various anti-Yugoslav (sic, anti-Communist) materials into Yugoslavia. (D.O.S. doc. #4)

The Glennon Report establishes that the Y.I.S. is allowed to run rampant in the United States; allowed to harass and intimidate Yugoslav emigres; allowed to infiltrate, neutralize and destroy emigre organizations; and even possibly allowed to murder outspoken critics of the Communist regime.

The campaign of terrorism conducted by Yugoslavia in this country has been mentioned in the Congressional Record on October 1, 1976 ("Tito's Campaign of Terror in the West", Hon. Philip M. Crane, Congressional Record, E 5665); on July 28, 1977 ("Yugoslav Terrorism and U.S. Security", Hon. Robert K. Dornan, Congressional Record, E 4956-57); and, September 29, 1977 ("Yugoslav Terrorism in the United States", Hon. Robert K. Dornan, Congressional Record, E 5969-71).

The D.O.S. documents establish that the Yugoslavs would only deal with SND with knives, revolvers and bombs. Kasikovic and nine-year old Ivanka Milosevic were brutally stabbed to death, each one sustaining over forty stab wounds.

Was the SND penetrated by Y.I.S. agents? It is the most likely emigre organization to be penetrated. The prosecution dismissed Count 5 because it did not want to destroy the viability of a confidential informant. Were there "agent provocateurs" in SND or SOPO provoking the acts alleged in the indictment? The government knows; the defense was not permitted to find out.

Was the F.B.I. cooperating with the Y.I.S. in these activities? That is a question of degree. The Glennon Report establishes that the F.B.I. was doing virtually nothing to stop their activities because of a perceived lacuna in the federal criminal code.

Under their FOIA requests, Petitioners have learned that the F.B.I. has extensive

files on them. Co-Defendant Kavaja's F.B.I. file indicates an unsuccessful attempt by the F.B.I. to recruit him as an informant and/or double agent in November, 1961.

Those documents also indicate that the F.B.I. was not concerned that there was no federal jurisdiction in their efforts to link Kavaja to the attack on the Yugoslav Consulate in Chicago in February, 1963. Why the lack of concern in that instance, and not when Y.I.S. terrorism is involved?

Why does the F.B.I. have documents on counsel for these Petitioners that are classified and purportedly exempt from disclosure on the basis of national defense or foreign policy? (They will not even say which.)

Was the prosecution's star witness an agent of the Y.I.S.? He did leave Yugoslavia legally; there was evidence that he was planning to return there and was, in fact, building a house there. The defense was, however, precluded from any extensive cross-examination of him both by their inability to obtain the subpoenaed documents

and by the limitations placed upon them by the Trial Court.

Bone was a suspect in the murders of Kasikovic and Milosevic; however, the F.B.I. did not allow Bone to be questioned in that regard. The murders remain unsolved despite the reliable report received by the F.B.I. in June, 1977, stating that the Y.I.S. was behind those murders.

Would the F.B.I. cover up the Kasikovic and Milosevic murders for the Y.I.S., and would the Chicago Police Department cooperate in such a cover-up?

It is a matter of public record that the F.B.I. and the "Red Squad" of the Chicago Police Department have engaged in illegal surveillance of lawful groups and individuals in Chicago. See A.C.L.U., et al. v. CITY OF CHICAGO, et al., No. 75 C 3295, and ALLIANCE TO END REPRESSION, et al. v. CITY OF CHICAGO, et al., No. 74 C 3268; both actions currently pending in the Federal District Court for the Northern District of Illinois. Illegal wiretaps, black-bag jobs and other COINTELPRO activities were engaged in.

The Court of Appeals frustrated defense attempts to establish the link between Bone and the Kasikovic/Milosevic murders. (See Appendix C)

The pending FOIA requests have established the existence of material documents in the custody of the government which were not made available to the defense prior to trial.

Given the inability to obtain the documents and the limitations imposed on cross-examination of government witnesses, as well as the "alleged" incriminating statements of the Defendants on the tapes, why did the defense not put the Defendants on the stand to testify?

Stevlich's trial attorney spent several days preparing him to testify. Kavaja fully expected to testify. Yet, none of the defendants took the stand.

This was a trial by jury, not a bench trial. The Sixth Amendment guarantees the right to trial by jury.

But the jury did not hear any of this evidence. The defense did not have it at the time

of trial. It is beyond the province of the District Court to determine what the jury would have done had they heard this newly discovered evidence, not to mention the remaining evidence not yet discovered.

Will the District Court grant Petitioners' Motion for New Trial? A reading of the trial transcripts leaves one with the impression that there were two prosecutors in this case: the government attorneys and the trial judge.

Counsel for Petitioners made his position clear on that Motion; so did the Trial Court:

> MR. SPIEGEL: Well, your Honor, as you know, the case is still on appeal and the Seventh Circuit recently issued its decision in the case, and we are in the process of preparing petitions for certiorari to the Supreme Court.
>
> A lot of the issues raised in the motions for new trial would be raised in those petitions, but I'm attempting to save the Supreme Court some time by giving your Honor the opportunity to --
>
> THE COURT: You have got to be dreaming! I already ruled on a motion for a new trial at the conclusion of the case.
>
> (Tr. 2/4/81; p. 2-3)

Petitioners alternatively asked for the opportunity to discover the documents in the gov-

ernment's possession, both in the District Court and in the Court of Appeals, to no avail.

This Court is authorized under 28 U.S.C. 1651 to issue any writ necessary or appropriate in conformity with the usages and principles of law. It is both necessary and appropriate that this Court exercise its supervisory control in this case.

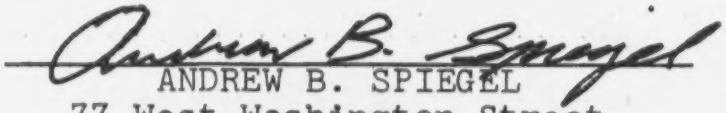
Would there have been reasonable doubt in the minds of any of the jurors had the defense been allowed to defend? Are these defense theories fact, or are they merely the fantasies perceived by the District Court? Should these Petitioners be required to relinquish their freedom before this reasonable doubt has been resolved?

This Court must exercise its supervisory control by remanding this case to the District Court with instructions to correct the constitutional deficiencies in this case. This Court is literally the Court of last resort for these Petitioners.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and orders of the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,



ANDREW B. SPIEGEL
77 West Washington Street
Suite 707
Chicago, Illinois 60602
312/782-8999
Counsel for Petitioners

February 21, 1981

APPENDIX A

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604
(Argued May 8, 1980)

OCTOBER 21, 1980.

Before

Hon. THOMAS E. FAIRCHILD, Chief Judge

Hon. PHILIP NICHOLS, JR., Judge*

Hon. RICHARD D. CUDAHY, Circuit Judge

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
Nos: 79-1686, 79-1700, vs.
79-1707, 79-1737
STOJILKO KAJEVIC, NIKOLA KAVAJA, RADOS STEVLIC, and NIKOLA ZIVOVIC,
Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 78-CR-858
HUBERT L. WILL, Judge.

ORDER

In a nine count indictment these four defendants were charged with a variety of offenses relating to the manufacture, transportation, and use of explosive devices. After a five week trial on eight of the counts (count five was dismissed before trial), each defendant was found guilty of the charges against him and each was sentenced to a term of imprisonment. We have considered the arguments raised by the defendants in their appeal and find no error which would require us to set aside the convictions. We have also considered, and deny, a motion to remand filed by defendant Kavaja and taken with appeal on the merits. Finally we rule on several motions filed since the date of oral argument.

SUPPRESSION ISSUES

There were two searches which were conducted at about the time of the defendants' arrests. One took place in New York City at a public parking garage leased and operated by Bosko Radonjic

* The Honorable Philip Nichols, Jr., Judge of the United States Court of Claims, is sitting by designation.

(a co-defendant who entered a guilty plea before trial), and the other in Paterson, New Jersey at the house of defendant Kavaja. The defendants filed motions to suppress the evidence seized during both searches which, after an evidentiary hearing, were denied by the district court.

The challenge to the search of the parking garage goes to the sufficiency of the evidence before the magistrate who issued the warrant. The warrant application was based on an affidavit reciting inter alia that the defendants had admitted to an informant their participation in past bombings and their plans for one in the immediate future. The defendants allege that the affidavit did not meet the standards of Aguilar v. Texas, 378 U.S. 108 for establishing the reliability of the confidential informant and therefore was an insufficient basis for the issuance of the warrant. The government responds initially by asserting that none of the defendants who are now challenging the search have any standing to do so and, that in any event, the affidavit contained sufficient corroborating evidence of the informant's reliability to support the magistrate's determination of probable cause.

The district court judge expressed his doubts about whether defendants other than Radonjic had standing to challenge the garage search but nonetheless proceeded to decide the question on its merits, concluding that no Aguilar problem was presented by the affidavit. Although we might well be inclined to agree with the district court were we to reach the merits of the defendants' argument, our conviction that the defendants are not in a position to challenge the legality of the garage search makes it unnecessary for us to reach the issue.

The Supreme Court, in a recent series of opinions, has stressed that only one who has an "expectation of privacy in the area searched" has "standing" to challenge a search of that area. United States v. Salvucci, U.S. , 48 U.S.L.W. 4881, 4883 (June 25, 1980); United States v. Payner, U.S. , 48 U.S.L.W. 4829 (June 23, 1980); Rakas v. Illinois, 439 U.S. 128, 134 (1978). In the district court one of the defendants challenging the search was the lessee of the parking garage. The defendants before us, however, are not in his position. Kavaja attempts to argue that because he was let into the garage late at night by Radonjic it can be inferred that he, as well as Radonjic, had an expectation of privacy in the garage. That argument is little more, however, than the "legitimately on the premises" argument which was decisively rejected by the Supreme Court in Rakas v. Illinois, 439, U.S. 128, 142-148. In the court below, and in their briefs to us, the defendants placed their primary reliance on the "automatic standing" rule of Jones v. United States, 362 U.S. 257 (1960), asserting that since they were charged with "possessory crimes" in connection with the dynamite found in the garage, they were automatically entitled to challenge the search which uncovered the dynamite. Since oral

argument in this case, however, the Supreme Court has explicitly overruled Jones, holding that "[w]e simply decline to use possession of a seized good as a substitute for a factual finding that the owner of the good had a legitimate expectation of privacy in the area searched." United States v. Salvucci, U.S. , 48 U.S.L.W. 4881, 4883 (June 25, 1980). The defendants, therefore, can no longer rely on Jones to support their challenge to the search of the parking garage. Absent that boost from Jones, the defendants are plainly not in a position to assert that probative evidence should have been suppressed. We agree with the government that the defendants do not have standing to challenge the garage search and therefore decline to reach the question of whether the affidavit supporting the warrant was inadequate.

The defendants do not challenge the warrant which authorized the search of the Kavaja residence in New Jersey. Instead they sought the suppression of evidence obtained during the search on the grounds that either the evidence was not relevant or it was more prejudicial than it was probative and thus should have been excluded. The trial judge did exclude much of the evidence but other evidence, including firecrackers, painted pipes, and a book entitled Poor Man's James Bond, was admitted. We agree with the district court that the evidence was releyant and hold that there was no abuse of discretion in its admission. We specifically hold that the admission of the book, which contained directions on how to make explosive devices using items such as those seized, did not infringe the defendants' First Amendment rights. This is not a case in which "the ideas of an author of a book [are] attributed to the reader of the book and then used against him to prove disposition to commit a crime, motive to undertake criminal action, or proof that he did the acts charged." United States v. Giese, 597 F.2d 1170, 1209 (9th Cir. 1979).

OTHER EVIDENTIARY ISSUES

The defendants principal line of defense at trial was an attack on the credibility of the chief government witness, Bogoje Panajotovic. Like the defendants, Panajotovic had been a member of "SOPO" (Freedom for the Serbian Fatherland), an organization of Serbian nationals opposed to the communist government of Yugoslavia. Panajotovic's testimony against the defendants was an important, and perhaps in some cases, absolutely critical part of the government's case in chief. The thrust of the defendants' attack on the Panajotovic's credibility was that he was an agent of the Yugoslav secret police, which, with or without the knowing cooperation of the Federal Bureau of Investigation, was engaged in an effort to silence SOPO's opposition to the Tito regime.

On appeal the defendants allege that they were prevented from fully exploring and proving this defense before the jury. They question first whether there was good-faith compliance with a subpoena issued to various government agencies for information about

their clients and Panajotovic. The district court judge reviewed five boxes of the subpoenaed materials in camera and concluded that there was nothing in those materials that in any way lent support to the defense theory that Panajotovic was an agent of the Yugoslav government. Apart from Brady material which was separately provided to the defendants, the district court judge denied the defense access to the material, holding it was not relevant to the case. We have done the same and agree. Our review of those materials also convinces us that there is no need to remand the case to the district court for further consideration of the question of good-faith compliance. 1/ We therefore deny the motion for remand filed by defendant Kavaja.

The defendants also assert that the trial judge improperly limited their attempt to explain their theory about Panajotovic to the jury, pointing to statements by the trial judge that events which may have taken place in Yugoslavia were irrelevant and at one point, to a statement by the judge which may have suggested to the jury that Panajotovic's motivation for testifying was irrelevant.

We have reviewed the transcripts and are convinced that the defendants' theory about the reasons for Panajotovic's cooperation was fully before the jury. Not only was Panajotovic cross-examined about his relationship to Yugoslav officials in this country and about whether he had plans to return to Yugoslavia, but the defendants also presented witnesses who testified in support of the defense theory. The remarks by the trial judge which are cited in the appellants' briefs were generally proper responses to either argumentative opening statements or to inappropriate and inflamatory questioning by defense counsel. 2/

The question of Panajotovic's motivation for testifying against the defendants was a particularly sensitive one. On one hand, the defense wished to attack Panajotovic's credibility by suggesting that he was testifying as an agent of the Yugoslav Police. On the other hand, however, the defendants wanted to avoid any reference to an earlier attempted bombing in Canada which had resulted in the deaths of three people. Since Panajotovic's stated reason for cooperating

---

1/ We have also found no support at all in materials we have recently examined in camera, produced by the government in response to an order we entered May 20, 1980 in connection with the motion to remand.

2/ For example, the judge sustained an objection by the government when defense counsel asked Panajotovic on cross-examination whether he wouldn't now be welcome in Yugoslavia in light of the service he was doing (by testifying against the defendants) for the Yugoslav government.

with the FBI was that the Canadian deaths had made him aware of the dangers of bombing as a form of political expression, it was difficult to make the first argument while still avoiding any reference to the second event. As it turned out, there were two brief and somewhat indirect references to the Canadian deaths in Panajotovic's direct testimony. One was ordered stricken by the trial judge and after the second the judge suggested that the prosecutor pursue a different line of questioning. Both references were fleeting and neither was the focus of any further questioning or argument by the prosecutor. The evidence was relevant to the issues at trial and even if its prejudicial effect outweighed its probative value, that prejudice became insignificant in light of the brevity of the testimony, the lack of attention it received, the trial court's curative instruction, and the context (a lengthy trial on multiple bomb-related counts) in which it arose. If there was any error in the court's handling of the situation it was harmless. 3/

Defendant Kavaja alleges that the evidence was insufficient to sustain his convictions on counts one, three, eight, and nine of the indictment. On review of the transcript, we conclude that there was ample evidence of Kavaja's participation in the conspiracy charged in count one. Kavaja's own admissions to the informant, as well as the statements of his co-conspirators about his co-conspirators about his role in the events charged in the other counts, were sufficient (along with the evidence obtained during the searches and the testimony of surveillance agents) to support his convictions on all counts.

KAVAJA'S MOTION FOR SEVERANCE

Late in the trial Kavaja made a motion for severance. He did not present to the trial court, or to us, any particular claims of prejudice (other than those inherent in any multi-defendant conspiracy trial) which would suggest that he could not or did not receive a fair trial. We find no abuse of discretion by the trial court in denying the motion.

CONSECUTIVE SENTENCES

Defendant Kavaja alleges that the imposition of consecutive sentences following his convictions on counts eight and nine of the indictment was improper. Count eight charged Kavaja with violating 18 U.S.C. 844(i) by attempting to place a bomb in the Yugoslav Club in Chicago, a building used in interstate commerce. Count nine charged a violation of 18 U.S.C. 844(d) for attempting to transport in interstate commerce a bomb knowing that it would be used "to kill, injure and intimidate individuals and destroy a building known as the Yugoslav Club." Kavaja alleges first that

3/ Defendant Kajevic also objects to the informant's mention of an automatic weapon owned by Kajevic. Again we find no reversible error in the context of this trial.

Congress did not intend to subject defendants to multiple punishments for violations of these two paragraphs and second, that if Congress did so intend, cumulative punishment such as that imposed here violates the double jeopardy clause of the Fifth Amendment. We find neither argument persuasive.

Section 844 was enacted as a part of the Organized Crime Control Act of 1970. Its inclusion in the Act was prompted largely by the campus bombings of the late 1960's, particularly the fatal bombing at the University of Wisconsin. Paragraph (d) of the section reads as follows:

> (d) Whoever transports or receives, or attempts to transport or receive, in interstate or foreign commerce any explosive with the knowledge or intent that it will be used to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property, shall be imprisoned for not more than ten years, or fined not more than $10,000, or both; and if personal injury results shall be imprisoned for not more than twenty years or fined not more than $20,000, or both; and if death results, shall be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment as provided in section 34 of this title.

Paragraph (i) provides:

> (i) Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce shall be imprisoned for not more than ten years or fined not more than $10,000, or both; and if personal injury results shall be imprisoned for not more than twenty years or fined not more than $20,000, or both; and if death results shall also be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment as provided in section 24 of this title.

In this case Kavaja's participation in the aborted plot to blow up the Yugoslav Club resulted in his receiving two consecutive ten year terms of imprisonment for violation of these two paragraphs.

There is no question that in enacting section 844 Congress intended to make the interstate transportation of explosives (844 (d)) and the use of explosives to damage a building used in interstate (844(i)) separate offenses separately punishable. That, however, does not necessarily mean that Congress authorized consecutive sentences where both offenses occur as part of a single

criminal episode. Whalen v. United States, U.S. , 48 U.S.L.W. 4406 (April 16, 1980). The determination of that intent requires consideration of the purpose of the legislation, its history, and the relationship of the two offenses to each other. United States v. Makres, 598 F.2d 1072, 1075 (7th Cir. 1979).

In enacting these two provisions of section 844 Congress was responding to two separate concerns. One was the danger of interstate shipment of explosives, which carries with it not only the risk that people or property will be injured by the explosives but also that state law enforcement procedures will be evaded by the interstate transportation. Paragraph (i), on the other hand, is directly addressed to the dangers created by the actual or attempted use of explosives. These separate dangers are consistent with a congressional intent in favor of separate, and cumulative, punishment, Ianelli v. United States, 420 U.S. 770, 779 (1975). The two provisions were enacted at the same time: this is not a case where a statute prohibiting theft is later amended to reach the possessors of the stolen property and is thus inappropriately enforced (absent clear congressional intent to the contrary) as an additional penalty against the original thief. See Milanovich v. United States, 365 U.S. 415 (1959). Nor is this a case in which a lesser crime "merges into" a greater crime when the greater crime is completed. Whalen v. United States, U.S. , 48 U.S.L.W. 4406, 4408-9 (April 16, 1980); Prince v. United States, 352 U.S. 322 (1957). We find no reason to believe that Congress intended to prevent cumulative punishment for violations of these two provisions.

The double jeopardy question is tested by the rule laid out in Blockburger v. United States.

> "The applicable rule is where the same act or transaction constitutes a violation of two distinct statutory provisions the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not.

284 U.S. 299, 304 (1932). See also Brown v. Ohio, 432 U.S. 161 (1977). There is no question that although there was certainly some overlap of proof counts eight and nine of the indictment required the government to prove different facts in support of each and the government did so prove. There is no constitutional infirmity in the consecutive sentences received by Kavaja.

OTHER ISSUES

We have considered the other issues raised by the defendants, in addition to the ones discussed above, and find none of them to be with merit.

Nos. 79-1686, 79-1700
79-1707, 79-1737

DISPOSITION OF OTHER PENDING MOTIONS

On may 23, 1980 Defendant Kavaja filed a "Motion to Supplement Record" which sought to supplement the record of this case on appeal with a copy of certain FBI documents. The government filed a "Response to Defendant-Appellant Kavaja's Motion to Supplement the Record" on May 30. On June 18, 1980 Kavaja filed a "Motion for Leave to Correct Kavaja's Motion to Supplement the Record" and a "Motion for Leave to File Reply in Further Support of Motion to Supplement the Record." On consideration of these documents IT IS ORDERED:

First, that the "Motion for Leave to Correct Kavaja's Motion to Supplement the Record" is GRANTED;

Second, that the "Motion for Leave to File Reply in Further Support of Motion to Supplement the Record" is GRANTED;

Third, that the "Motion to Supplement the Record" is DENIED.

On July 7, 1980 Kavaja filed a "Motion for Summary Reversal" alleging that he was denied his Sixth Amendment right to effective assistance of counsel because he did not speak English and was not provided with simultaneous translation of the trial testimony. We note from our own review of the record below that both the tape recordings and the testimony of the key government witnesses were in Serbian and, in addition, that Kavaja's trial counsel was fluent in both English and Serbian. Motion for Summary Reveresal is DENIED.

CONCLUSION

The various motions filed by Defendant Kavaja are disposed of as set forth above. The judgments of conviction are AFFIRMED.

APPENDIX B

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

DECEMBER 23, 1980.

Before

Hon. THOMAS E. FAIRCHILD, Chief Judge

Hon. PHILIP NICHOLS, JR., Judge*

Hon. RICHARD D. CUDAHY, Circuit Judge

UNITED STATES OF AMERICA, Plaintiff-Appellee, No.s. 79-1686, 79-1700vs. 79-1707, 79-1737 STOJILKO KAJEVIC, NIKOLA KAVAJA, RADOS STEVLIC, and NIKOLA ZIVOVIC, Defendants-Appellants.	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division No. 78-CR-858 HUBERT L. WILL, Judge.

ORDER

On consideration of the petitions for rehearing and suggestions for rehearing in banc filed in the above-entitled cause by counsel for defendants-appellants, no judge in regular active service has requested a vote on the suggestions for rehearing in banc, and all members of the original panel have voted to DENY a rehearing. Accordingly,

IT IS ORDERED that the aforesaid petitions for rehearing filed November 3, 1980 by Appellant Kavaja; filed November 4, 1980 by Appellants Stevlic and Zivovic, and filed November 18, 1980 by Appellant Kajevic be, and the same are each hereby, DENIED.

*The Honorable Philip Nichols, Jr., Judge of the United States Court of Claims, is sitting by designation.

FPI—GAO—12-12-79-100-1151

APPENDIX C

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

December 15, 1980.

Before

Hon. THOMAS E. FAIRCHILD, Chief Judge

Hon. _____

Hon. _____

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

Nos. 79-1700, 79-1707, 79-1737 vs.

STOJILKO KAJEVIC, NIKOLA ZIVOVIC, NIKOLA KAVAJA,
Defendants-Appellants.

Appeals from the Unites States District Court for the Northern District of Illinois, Eastern Division.

No. 78-CR-858
Judge Hubert L. Will

This matter comes before the court for its consideration upon the "MOTION TO REQUIRE COMPLIANCE WITH SUBPOENA" filed herein on December 12, 1980 by counsel for the defendants-appellants. On consideration thereof,

IT IS ORDERED that the motion is hereby DENIED.

APPENDIX D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 78 Cr 858
	)	
STOJILKO KAJEVIC, et al.,	)	
	)	
Defendants.	)	Judge Hubert L. Will, Presiding

MOTION FOR NEW TRIAL

Defendants NIKOLA KAVAJA (Kavaja), RADOS STEVLICH (Stevlich), and NIKOLA ZIVOVIC (Zivovic), by their attorney, ANDREW B. SPIEGEL, hereby move for a new trial pursuant to Rule 33 of the Rules of Criminal Procedure on the ground that newly discovered evidence requires such action in the interests of justice. In support of this Motion, said Defendants state as follows:

1. To warrant granting a motion for new trial on the basis of newly discovered evidence, the movant must show that the evidence was discovered since trial, that it could not have been discovered sooner with the exercise of due dilligence, that the evidence is not merely cumulative or impeaching, and that it would probably produce a different verdict. U.S. v. ELLISON, 557 F. 2d 128 (7th Cir., 1977).

2. The newly discovered evidence that is the subject of this Motion was obtained by counsel for movants in January, 1981, long after the trial was over. He had been trying to obtain this information since May, 1980, but had been unable to obtain it because it is contained in a classified Senate Foreign Relations Sub-Committee Report

entitled "Foreign Intelligence Activities in the United States", (hereinafter, the "Glennon Report").

3. The evidence is not merely cumulative or impeaching; it raises the strong presumption that the government's case was based upon false information; information calculated to neutralize the Defendants as effective critics of the government of Yugoslavia.

4. It also raises the strong presumption that the government has in its possession documents which establish a cooperative connection between the FEDERAL BUREAU OF INVESTIGATION (F.B.I.) and the Yugoslav Intelligence Service (Y.I.S.).

5. The newly discovered evidence, which consists of the section of the Glennon Report relating to Y.I.S. activities in this country, is only the starting point for further inquiry in this area.

6. Information in the possession of the F.B.I., the CENTRAL INTELLIGENCE AGENCY (C.I.A.) and other United States government agencies which conduct intelligence investigations establishes that Y.I.S. activities in the United States have included:

a. creation of "incidents" such as bombing a Yugoslav diplomatic establishment or staging an attack on a Yugoslav official for the purpose of causing United States security elements to intensify their coverage of Yugoslav emigres and organizations;

b. assassination of leaders of various anti-communist organizations in the United States;

c. penetration and neutralization of emigre groups. (Knowledgeable F.B.I. officials believe that "neutralization" encompasses harassment, intimidation, and perhaps assassination.).

7. Y.I.S. activities in Chicago apparently include the June, 1977 murders of DRAGISA KASIKOVIC (Kasikovic) and the nine-year old girl, IVANKA MILOSEVIC (Milosevic).

8. The F.B.I. has in its possession what it terms a "reliable report" which it received in June, 1977. That report states that the Y.I.S. was behind those murders.

9. The newspaper accounts of the Kasikovic and Milosevic murders indicate that they were repeatedly stabbed and beaten to death. But, according to the information supplied by the F.B.I. to the drafters of the Glennon Report, Kasikovic was shot once in the head and once in the heart -- which the F.B.I. said was a "trademark" of political assassinations of Y.I.S. officers. This would not be the first time the F.B.I. was responsible for planting false stories in the newspapers.

10. The Chicago Police Department is apparently unaware of the reliable F.B.I. report. Whether they are participating in an apparent cover-up of that Y.I.S. crime in Chicago cannot be determined at this time.

11. An additional piece of newly discovered evidence concerns the government's chief witness in this case, BOGOJE PANAJOTOVIC (Bone) and his involvement in the Kasikovic-Milosevic murders.

12. Counsel has learned that Bone was a suspect in that murder investigation. Chicago Police investigators were not allowed to question him about those murders.

13. They were told by the F.B.I. that Bone was working for them, so there was no need to question him.

14. Whether that meant that Bone was working for them in June, 1977, is not clear at this point. If so, however, then both Bone and the F.B.I. agents who testified in this case regarding Bone perjured themselves by stating that Bone did not begin working with the F.B.I. until mid-May, 1978.

15. In addition, the F.B.I. has apparently compiled a dossier on counsel for the above Defendants in violation of the proposed settlements pending in the "Police Spying Cases", (ALLIANCE TO END REPRESSION, et al. v. CITY OF CHICAGO, et al., No. 74 C 3268; A.C.L.U. v. CITY OF CHICAGO, No. 75 C 3295).

16. In a letter dated December 10, 1980, counsel for these Defendants was advised in response to a Freedom of Information Act request that:

> "With regards to your request dated August 4, 1980, for information regarding yourself, a search of the records in our central records system has revealed one eight-page document which is classified and is being withheld in its entirety as exempt from disclosure under the following sub-section of Title 5, United States Code, Section 552, (b)(1) which exempts:
>
> > information which is currently and properly classified pursuant to Executive Order 12065 in the interest of national defense or foreign policy.
>
> This eight-page classified document does not relate to your travels in Chicago and New Jersey as mentioned in your June 26, 1980 letter, nor does it contain information regarding any cointelpro activity concerning you or your clients."
>
> (Letter to Andrew B. Spiegel from Thomas H. Bresson, Chief, Freedom of Information-Privacy Acts Branch, Federal Bureau of Investigation, December 10, 1980.)

17. The only case counsel for the above Defendants has been involved in that has any relation to national defense or foreign policy

is this case. The F.B.I. has refused to produce their file on counsel for these Defendants.

18. It is clear for the first time in this litigation that the above Defendants are involved in a life and death struggle with the Y.I.S.; their struggle is not an "ancient battle transported to these shores".

19. Neither this Court nor the jury were advised of these circumstances. Had this matter been fully explored prior to trial, it is conceivable that the defense would have prevailed in establishing that Bone was an agent for the Yugoslav government.

20. It is also clear that the F.B.I. and other government agencies have documents in their possession that more fully detail the activities of the Y.I.S. in this country and in Chicago.

21. Under these circumstances, the interests of justice require that a full disclosure be made by the F.B.I. of its knowledge of Y.I.S. activities in Chicago and their connection to this litigation.

WHEREFORE, Defendants NIKOLA KAVAJA, RADOS STEVLICH and NIKOLA ZIVOVIC pray that the Court grant them a new trial in this action.

Alternatively, said Defendants pray that the Court order the government to produce all documents relating to the Yugoslav Intelligence Service's activities in the Chicago area and defer any action on the government's Motion to Set a Surrender Date until completion of said proceedings.

Respectfully submitted,

DATED: February 2, 1981

Andrew B. Spiegel

ANDREW B. SPIEGEL

APPENDIX E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff,	)	
v.	)	No. 78 Cr 858
STOJILKO KAJEVIC, et al., Defendants.	)	

MOTION TO VACATE ORDER
OF FEBRUARY 4, 1981

Defendants RADOS STEVLICH (Stevlich) and NIKOLA ZIVOVIC (Zivovic) by their attorney, ANDREW B. SPIEGEL, move the Court to vacate its Order of February 4, 1981, and as grounds for this Motion, state as follows:

1. On February 4, 1981, the Court granted the government's motion to set surrender dates for Stevlich and Zivovic, ordering them to surrender to the U.S. Marshal's Office on Monday, March 2, 1981, at 11:00 a.m.

2. On February 11, 1981, ANDREW B. SPIEGEL (Spiegel), counsel for Stevlich and Zivovic, received declassified documents from the DEPARTMENT OF STATE (DOS) under Privacy Act Requests Nos. 800 3848 and 800 3846 relating to Stevlich and Zivovic.

3. Those requests have revealed the existence of additional documents in the possession of the U.S. Secret Service, the F.B.I., the C.I.A., and the Bureau of European Affairs (E.U.R.). See the letter to Spiegel from William K. Larson, dated 5 February, 1981, attached hereto as "EXHIBIT A".

4. The documents that were produced establish both the political and the foreign policy overtones of this case that were not before the jury.

5. Examples of these overtones are contained in the DOS documents produced, including, inter alia:

a. Secretary of State Cyrus Vance confidential telegram to the American Embassy, Canberra, dated 12/3/78 which states in part:

". . . On the Serbian case, the U.S. Attorney's Office was not able to furnish details on the charges, beyond confirming the press story. No trial date has been set.

"5.(c) IN DISCUSSIONS WITH THE YUGOSLAVS HERE WE INTEND TO EMPHASIZE THE POSITIVE -- THE CONVICTION TO THE TWO CROATIANS AND THE SERIOUSNESS OF THE CHARGES AGAINST THE SIX SERBS.

Vance unquote Vance"

(Emphasis supplied)

"EXHIBIT B" attached hereto.

b. DOS Memorandum dated June 8, 1979 from (censored) to Darryl N. Johnson, EUR:

"Pursuant to our recent telephone conversation on subject, the following is a compilation of the individuals who have been arrested and tried for anti-Yugoslav terrorist acts in the United States. I have divided them by incident and HAVE INDICATED SENTENCES, EXPECTED PAROLE DATES and current place of incarceration." (emphasis supplied)

"EXHIBIT C" attached hereto.

The balance of this DOS memorandum is censored, except for the names, dates of birth and place of birth of Stevlich and Zivovic and a description of their convictions. It, in addition, indicates copies to RSO, Belgrade.

5. The DOS documents are dealt with more extensively in these Defendants' REPLY IN SUPPORT OF MOTION FOR NEW TRIAL.

6. The government's failure to provide the defense with those documents violates both the letter and the spirit of BRADY v. MARYLAND, 373 U.S. 83 (1963), which held:

> We now hold that the suppression by the prosecution of evidence favorable to an accused UPON REQUEST violates due process where the evidence is material EITHER TO GUILT OR TO PUNISHMENT IRRESPECTIVE OF THE GOOD FAITH OR BAD FAITH of the prosecution.
>
> (emphasis supplied)
>
> 373 U.S. at 87

7. Due process has been violated in this case by the government's suppression of evidence in its possession. It was not only requested by the defense, it was subpoenaed.

8. It is not known to counsel for the Defendants whether any of these documents were amongst those reviewed in camera by the Court.

9. Stevlich and Zivovic are currently on bond, are required to report daily to the F.B.I., and pose no danger to the government by remaining at liberty until the appellate and post conviction process has been exhausted.

10. The Affidavit of Spiegel is attached hereto as "EXHIBIT D".

11. Each of the above Exhibits and the defense subpoenaes referred to in Paragraph 7 above are incorporated herein by reference.

WHEREFORE, Defendants STEVLICH and ZIVOVIC pray that the Court vacate its Order of February 4, 1981, and stay any ruling on the government's motion to set surrender dates until the appellate and post-conviction process has been exhausted.

Respectfully submitted,

DATED: February 12, 1981

Andrew B. Spiegel
ANDREW B. SPIEGEL

DEPARTMENT OF STATE

Washington, D.C. 20520

1981

Mr. Andrew B. Spiegel
77 West Washington Street
Suite 707
Chicago, Ill. 60602

Re: Privacy Act Case Numbers 8003846 and 8003848

Dear Mr. Spiegal:

Reference is made to your November 24, 1980 Privacy Act request to the Department of State relating to Mr. Rados Stevlich and Mr. Nikola Zivovic. The Office of Security has searched its system of records and has located forty-six (46) documents relevant to your requests. These documents have been numbered 1-46 and are identified on the enclosed listing.

Documents numbered 1-14 are being released to you in full. Portions of documents numbered 15-24 and all of document number 25 have been withheld to protect the privacy of others. Portions of documents numbered 23 and 24 which originated with the U.S. Secret Service and those portions of documents numbered 23, 24, 27-33 which originated with the Federal Bureau of Investigation (FBI) have been referred to those agencies for review. The Department's Information and Privacy Staff will notify you of the determinations. Document number 26 which originated with the Central Intelligence Agency (CIA) and documents numbered 34-37 which originated with the FBI are being returned to the CIA and FBI for review and direct response to you. Documents numbered 38-46 which originated with the Bureau of European Affairs (EUR) are being forwarded to EUR for review and the Department's Information and Privacy Staff will also notify you of these determinations.

The Privacy Act permits individuals to request amendment of information about themselves. If your clients believe that the information the Office of Security maintains about them is not accurate, relevant, timely, or complete, they may request amendment of it. For your information, enclosed is a copy of the Department's procedures for requesting amendment of personal information.

If you have any questions regarding a particular aspect of your request, you should contact the Information and Privacy Staff, Room 1239, Department of State, 2201 'C' Street, N.W., Washington, D.C. 20520. In any communication please utilize your request number.

Sincerely,

William K. Larson

William K. Larson, Chief
Freedom of Information and
Privacy Staff
Office of Security

Enclosures:
List of Documents
Documents
Amendment Procedures

" EXHIBIT A "

List Of Documents

Document	Date
1. Article	7/16/79
2. Article	6/25/79
3. Article	5/10/79
4. Article	5/29/79
5. Article	5/25/79
6. Article	6/23/79
7. Article	2/20/79
8. Article	Undated
9. Article	11/22/?
10. Article	12/6/78
11. Article	5/2/?
12. Article	11/23/?
13. Article	5/25/79
14. Note	Undated
15. Memo	5/7/79
16. Duty Log	11/22/78
17. Telegram	6/26/79
18. TECS	4/12/79
19. Memo	12/6/79
20. Memo	6/8/79
21. Report	11/78
22. Telegram	12/6/78
23. File Card	3/15/76
24. File Card	3/15/76
25. Lookout	Undated
26. Report	12/6/78
27. Telegram	9/10/80
28. Telegram	7/21/78
29. Telegram	11/17/80
30. Telegram	3/6/78
31. Telegram	3/4/78
32. Telegram	3/4/78
33. Telegram	3/6/78
34. Report	3/19/79
35. TECS	2/9/78
36. Report	6/29/78
37. Report	6/2/78
38. Letter	3/22/79
39. Telegram	11/24/78
40. Telegram	12/23/78
41. Telegram	3/3/79
42. Telegram	11/24/78
43. Telegram	12/3/78
44. Telegram	4/15/79
45. Telegram	4/13/79
46. Memo	3/1/76

Department of State TELEGRAM

PAGE 01 STATE 305366 0744 STATE 305366

SMASH ST-05

INFO OCT-01 ISO-00 [redacted] AF-06

64053

DRAFTED BY: [redacted]

APPROVED BY: A/ST/OPS - V. F. S. HAAS

A/ST - E. D. ACKERMAN, DASS

-----------------031734 0611452 /17

P 061925Z DEC 76

FM SECSTATE WASHDC

TO AMEMBASSY CANBERRA PRIORITY

AMCONSUL SYDNEY PRIORITY

C O N F I D E N T I A L STATE 305366

REF: CANBERRA 9719

FM STATE 305366 SENT ACTION BELGRADE INFO ZAGREB BONN DEC 2, 1976

C O N F I D E N T I A L STATE 305366

E.O. 11906: GDS 12-3-84 (SCHMIDT, CARL W.)

TAGS: PINT, ASEC, YU

SUBJ: SERBIAN TERRORISTS CHARGED, CROATIANS CONVICTED

1. AP REPORTS DEC 1 FILED THE FOLLOWING STORY FROM CHICAGO CONCERNING THE CHARGES AGAINST SIX SERBIAN-AMERICANS RECENTLY ARRESTED IN NEW YORK AND CHICAGO AND ABOUT THE RESULTS OF THE TRIAL OF THE TWO CROATIANS WHO TOOK OVER THE YUG CONSULATE GENERAL IN CHICAGO IN AUGUST.

2. BEGIN DESIG TEXT: CHICAGO, DEC 1, REUTER - U.S. AUTHORITIES ANNOUNCED TODAY THAT SIX SERBIANS HAVE BEEN INDICTED ON A CHARGE OF PLOTTING TO ASSASSINATE PRESIDENT TITO OF YUGOSLAVIA DURING A VISIT TO WASHINGTON LAST MONTH. THE INDICTMENT BY A SPECIAL GRAND JURY ALLEGES THAT THE SIX MEN CONSPIRED TO KILL THE 84-YEAR-OLD YUGOSLAV LEADER WITH A BOMB DURING HIS THREE-DAY VISIT FROM MARCH 7 TO 9.

FIVE OF THE MEN WERE ARRESTED LAST WEEK -- THREE IN NEW YORK AND TWO IN CHICAGO. THEY WERE SUBSEQUENTLY CHARGED WITH PLOTTING TO BOMB A YUGOSLAV RECEPTION IN CHICAGO.

THE FBI SEIZED SEVERAL BOMBS WHEN IT SWOOPED ON THE THREE SERBIANS IN A NEW YORK GARAGE.

THE SIXTH MAN NAMED IN THE INDICTMENT IS NOT YET IN CUSTODY BUT THE FBI EXPECTS HE WILL SURRENDER SHORTLY IN CHICAGO.

THE INDICTMENT ANNOUNCED JOINTLY BY THE FBI AND U.S. ATTORNEY FOR NORTHERN ILLINOIS, THOMAS SULLIVAN, GAVE NO DETAILS OF THE ASSASSINATION PLOT AGAINST PRESIDENT TITO.

THERE WERE NO REPORTED BOMB BLASTS IN WASHINGTON DURING PRESIDENT TITO'S VISIT.

AUTHORITATIVE SOURCES SAID THE ALLEGED PLOTTERS NEVER GOT THEIR BOMBS TO WASHINGTON.

THE SOURCES SAID EXPLOSIVE DEVICES WERE FOUND BY FBI AGENTS IN A RAID ON A CHICAGO HOUSE LAST MAY.

IT WAS NOT CLEAR WHETHER THE FBI KNEW ABOUT THE ALLEGED PLOT BEFORE PRESIDENT TITO'S VISIT.

THE NINE-COUNT INDICTMENT ALSO CHARGES THE SIX SERBIANS WITH PLOTTING TO PLANT A BOMB TO KILL YUGOSLAV OFFICIALS AT A DIPLOMATIC RECEPTION THE YUGOSLAV CONSULATE HELD IN CHICAGO LAST NOVEMBER 25.

THE INDICTMENT FURTHER ALLEGES THAT THE SIX MEN BOMBED THE HOME OF THE YUGOSLAV CONSUL IN CHICAGO IN DECEMBER 1975. NO ONE WAS INJURED IN THE BLAST.

THE SIX ACCUSED SERBIANS COULD FACE LIFE IMPRISONMENT IF CONVICTED.

THE FIVE ALREADY DETAINED ARE STOJILKO KAJEVIC, NIKOLA KAVAJA, RADOS STEVLIC, DUSKO RADOSLJIC AND NIKOLA ZIVOVIC. THE SIXTH SERBIAN WAS NAMED AS ZIVOTIJE SAVIC.

THE AUTHORITIES DELAYED DIVULGING THE INDICTMENT UNTIL AFTER THE TRIAL OF TWO CROATIANS WHO SEIZED HOSTAGES AT THE WEST GERMAN CONSULATE IN CHICAGO LAST AUGUST TO TRY TO STOP THE EXTRADITION OF A CROATIAN SEPARATIST LEADER FROM WEST GERMANY TO YUGOSLAVIA.

THE AUTHORITIES DID NOT WANT THE PUBLICITY TO PREJUDICE THE SEVEN-DAY TRIAL OF THE TWO CROATIANS, WHO WERE ACQUITTED ON A FIVE-COUNT INDICTMENT OF CONSPIRACY AND KIDNAPPING EARLIER TODAY AND CONVICTED ON A LESSER CHARGE OF IMPRISONING A FOREIGN OFFICIAL.

BOTH CROATIAN AND SERBIAN NATIONALISTS HAVE A HISTORY OF HOSTILITY AGAINST THE COMMUNIST GOVERNMENT OF PRESIDENT TITO. THEY HAVE LONG BEEN CAMPAIGNING -- OFTEN BY VIOLENT MEANS -- FOR INDEPENDENCE FOR THEIR REPUBLICS FROM THE FEDERATION OF YUGOSLAVIA. END TEXT.

3. GP COMMENT: BOTH CASES HAVE RECEIVED EXTENSIVE NATIONAL MEDIA COVERAGE (EVENING NETWORK TELEVISION NEWS ON DECEMBER 1, WIRE SERVICE RADIO NEWS AND NEWSPAPER ARTICLES ON DECEMBER 2). REPORTS ARE STRAIGHTFORWARD ACCOUNTS OF CHARGES AND TRIAL RESULTS WITHOUT SUBSTANTIVE COMMENTARY.

4. (C) DEPARTMENT CONTACTED US ATTORNEY'S OFFICE IN CHICAGO LATE ON DECEMBER 1 TO CONFIRM PRESS REPORTS. ASSISTANT US ATTORNEY HOUCHEN EXPRESSED DISAPPOINTMENT IN TRIAL RESULTS, IN WHICH THE JURY HAD RETURNED NOT GUILTY VERDICTS ON ONE COUNT OF CONSPIRACY AND FOUR OF KIDNAPPING. HE SAID THAT THE CONVICTION ON IMPRISONING A FOREIGN OFFICIAL CARRIES A MAXIMUM TEN YEAR SENTENCE AND THAT HIS OFFICE WOULD SEEK THE MAXIMUM SENTENCE. SENTENCING IS EXPECTED DURING THE FIRST WEEK OF JANUARY. THE DEFENSE DID NOT SEEK THE CONDITIONAL RELEASE OF THE TERRORISTS OR THE REDUCTION OF BOND. HENCE THEY ARE EXPECTED TO REMAIN IN JAIL UNTIL SENTENCING. ON THE SERBIAN CASE, THE US ATTORNEY'S OFFICE WAS NOT ABLE TO FURNISH DETAILS ON THE CHARGES, BEYOND CONFIRMING THE PRESS STORY. NO TRIAL DATE HAS BEEN SET.

5. (C) IN DISCUSSIONS WITH THE YUGOSLAVS HERE WE INTEND TO EMPHASIZE THE POSITIVE -- THE CONVICTION OF THE TWO CROATIANS AND THE SERIOUSNESS OF THE CHARGES AGAINST THE SIX SERBS. VANCE UNQUOTE VANCE

NOTE: ORIGINAL DIST: EUR/150, SY, NCT, SSO-5, INRC-1, FBI, PRES, NSC, L, H, SCS, CA, SS, NSCC, USSS, SY,.

" EXHIBIT B "

CONFIDENTIAL

DEPARTMENT OF STATE

Washington, D.C. 20520

20

MEMORANDUM

June 8, 1979

TO : EUR/EE - Darryl N. Johnson

FROM : SY/CC/TAG - [redacted]

SUBJECT : Anti-Yugoslav Terrorists Currently Incarcerated in U.S. Prisons

Persuant to our recent telephone conversation on subject, the following is a compilation of the individuals who have been arrested and tried for anti-Yugoslav terrorist acts in the United States. I have divided them by incident and have indicated sentences, expected parole dates, and current place of incarceration.

[redacted]

" EXHIBIT C "

[redacted]

SERBIAN CONSPIRACY TO BOMB YUGOSLAV RECEPTION & OTHER BOMBINGS

[redacted]

ZIVOVIC, Nikola DPOB: 11/27/26, Yugoslavia

STEVLIC, Rados DPOB: 12/18/38, Yugoslavia

[redacted]

On May 24, 1979 all of the above were found guilty on eight counts of conspiracy to bomb a Yugoslav reception in November 1978, bombing the residence of a Yugoslav consul in December 1975, and other anti-Yugoslav bombings and conspiracies. Sentencing is expected by the end of June 1979.

Copies: RSO, Belgrade
M/CT

STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

A F F I D A V I T

ANDREW B. SPIEGEL, being first duly sworn, on oath deposes and states the following:

1. That he is the attorney for RADOS STEVLICH (Stevlich) and NIKOLA ZIVOVIC (Zivovic) in the matter before the Court.

2. That on November 24, 1980, he initiated Freedom of Information Act requests on behalf of Stevlich and Zivovic.

3. That he was advised on December 16, 1980, that the request would be treated by the DEPARTMENT OF STATE (DOS) as a Privacy Act request and further that he would be notified when the information requested became available.

4. That he received certain documents from DOS on February 11, 1981, and that the documents attached as "EXHIBIT B and C" thereto are true and accurate copies of document numbers 22 and 20 of those documents. (The numbers are those provided by the DOS).

FURTHER AFFIANT SAYETH NOT.

Andrew B. Spiegel
ANDREW B. SPIEGEL

SUBSCRIBED AND SWORN to
before me this 12th day
of February, 1981.

Marilyn L Colman
Notary Public

"EXHIBIT D"

see 80

see 242